HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1364 of 2003 (SS)

Chandra Mohan vs. Divisional Forest Officer

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 6.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1364 of 2003 (SS)

Chandra Mohan Singh Rana son of Sri
Fateh Singh, R/o village Sapeta
P.O. Naugaon, District Uttarkashi ..... Petitioner

Versus

Divisional Forest Officer, Upper Yamuna
Forest Division, Barkot, Uttarkashi. ..... Respondents

Sri B.D. Upadhyay, Advocate for the petitioner
Standing Counsel for the respondent.

Dated: 6.11.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of certiorari quashing the order dated 22.10.2003, annexure-1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that petitioner was appointed as Telephone Lineman in the Forest Department in the year 1984 but from 1989 work of Forest Guard was being taken from him. The petitioner was suspended by the respondent vide order dated 28.8.2002 and an inquiry was contemplated against him. Charge sheet was filed against the petitioner and after concluding inquiry punishment of withholding of

two increments permanently and recovery of a sum of Rs.18,482.50 was imposed against him vide order dated 22.10.2003.

Counsel for the petitioner assailed the impugned order on the ground that no opportunity of hearing has been given to the petitioner before passing the impugned order by the Disciplinary Authority. He has referred the judgment of Apex Court in the case Punjab National Bank and others vs. Kunj Behari Misra, AIR 1998 SC 2713 where it has been held that delinquent employee has to be given opportunity of hearing and rule of natural justice must be followed. The observations of the Apex Court are as under:

"The result of the aforesaid discussion would be that the principles of natural justice have to b read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice as we have already observed require the authority, which has to take a final decision and

can impose a penalty to given an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this court in the case of Institute of Chartered Accountants (AIR 1987 SC 71. While agreeing with the decision in Ram Kishan's case (1995 AIR SCW 4027) we are of the opinion that the contrary view expressed in S.S. Koshal (1194 AIR SCW 2901) and M.C. Saxena's cases (1998 AIR SCW 965) do not lay down the correct law."

The learned counsel for the petitioner, therefore, has submitted that since no opportunity has been given to the petitioner to represent that case before the passing order of punishment and as such the impugned order is liable to be set aside.

After considering the case in the light of principles of law laid down by the Apex Court, I am of the opinion that since under Rule 11 of the U.P. Govt. Servant (Discip. & Appeal) Rules 1999, there is a provision of appeal to the next higher authority against the order passed by Disciplinary Authority, as such no relief can be granted to the petitioner under Article 226 of the Constitution of India.

The writ petition is, therefore, not maintainable on the ground of alternative remedy of appeal. However, liberty is given to the

petitioner to file the appeal before the appropriate authority within six weeks from today. The recovery proceedings shall remain in abeyance for six weeks only.

With the aforesaid observations the writ petition is dismissed.

06.11.2003 **(Rajesh Tandon, J.)**
*Dhyani